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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/154,562	11/19/93	FOGEL	A

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12M2/0122

EXAMINER

BARTS, S

ART UNIT

PAPER NUMBER

1204

DATE MAILED: 01/22/98

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**08/154,562**

Applicant(s)  
**Fogel**

Examiner  
**SAMUEL BARTS**

Group Art Unit  
**1204**



☒ Responsive to communication(s) filed on Dec 15, 1997

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 49-58 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 49-58 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit:

*Response to Arguments*

1. Applicant's arguments filed 12/15/97 have been fully considered but they are not persuasive.

Applicant has argued that the reference of Amaya fails to render the instant claimed invention obvious because Amaya teaches the use of other ingredients, such as comonomers, to produce a fined powder which is included in cosmetic application. Applicant argues that Amaya invention is inapposite to the instant claimed invention because of the required use of said additional ingredients.

The Examiner is not convince with this argument. The instant claimed invention requires that the emollient have the property that it is solid at room temperature and melts at body temperature. Note that the claimed emollient has the property of being a solid at room temperature and melting at body temperature not the blend of esters. Furthermore, the instant claims reads on the inclusion of other ingredients which may actually be partially or fully responsible for the physical characteristics of the emollient. The open ended language of "comprising" renders the instant claim broad enough to read on the cosmetic composition of Amaya. "Comprising" allows for the inclusion of other ingredients. Note that Amaya actually makes a cream with the blended unsaturated carboxylic aids ester as one component. Therefore, Amaya's cosmetic composition meets the instant claimed physical requirement of being a solid at room temperature and melting at body temperature. Amaya invention fails only to teach using a

Art Unit:

particular blend of esters. However, using a mixture of compounds in a composition wherein said compounds are known to have the same utility is obvious. One would expect the additive properties of the individual compounds in the mixture.

***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 49-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amaya. For reason see abovementioned arguments and the previous office action.


***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for response to this final action is set to expire **THREE MONTHS** from the date of this action. In the event a first response is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than **SIX MONTHS** from the date of this final action.

Art Unit:

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Samuel Barts whose telephone number is (703)308-4630. The Examiner's normal tour of duty is between 6:30-3:00, M-F. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 1200 receptionist whose telephone number is (703) 308-1235. Communications may now be transmitted via FAX directly to group 1200. The official group 1200 FAX machine number is (703) 308-4556.

  
SAMUEL BARTS  
PRIMARY EXAMINER  
GROUP 1200

S.B.  
January 20, 1998  
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